

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s).8321-8324 OF 2011

K.ANJANEYULU & ORS.

Appellant(s)

VERSUS

T. ASHOK RAJU & ORS.

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) Respondents No.1 to 10 and 14 to 21 were appointed as LDCs in February 1991. They were required to undergo three months training prior to being put on probation. Both LDCs and Typists are in the integrated feeder category for promotion as UDCs. Respondents No.12 and 13 issued a Memo dated 16.07.2002 clarifying that the training period in respect of LDCs/RCs would be reckoned as the period in service for promotion as UDCs. In the said Memo dated 16.07.2002, it was stated that as per the orders issued in Memo dated 02.04.1994 by the Andhra Pradesh State Electricity Board (APSEB), the integrated seniority list of LDCs/RCs/Typists would be drawn without disturbing their seniority assigned during selection for appointment to that post. LDCs/RCs/Typists are different categories and having separate seniority lists for each category. In the said Memo it was clarified that for integrating their seniority, the date of joining as Trainee LDCs/RCs shall be taken as criteria for their integrated

seniority without disturbing their relative seniority in their respective cadres. It was stated in the Memo dated 16.07.2002 that the earlier Memo dated 02.04.1994 holds good as it was issued for the purpose of integrated seniority of LDCs/RCs/Typists for considering their cases for promotion by taking into account the training period of LDC/RCs for the purpose of seniority. Grievance of the appellants is that they are superseded by the respondents in the matter of promotion to the category of UDCs on the basis of reckoning inter se seniority between the category of typists and that of LDCs. The appellants filed writ petition praying that the Memo dated 16.07.2002 be declared as illegal and contrary to the statutory regulations and to direct the respondents to prepare an integrated seniority list of LDCs and typists in accordance with Regulation 26 of AP State Electricity Board Service Regulations for promotion to the post of UDC Division clerks.

(2) Learned Single Judge vide Order dated 01.07.2004 came to the conclusion that the integrated seniority list of LDCs and the Typists would have to be determined in conformity with Regulation 26 read with stipulations in Annexure-IV. Learned Single Judge further held that Memo dated 16.07.2002 was clearly inconsistent with the legal position as contemplated by Regulation 26 and the Memos dated 02.04.1994 and 16.07.2002 are only executive instructions and based on such executive instructions the integrated seniority cannot be worked out.

(3) Aggrieved by the judgment passed by learned Single Judge, respondents no.4 to 8 preferred appeals before the Division

Bench of the High Court in W.A. No(s).1285 of 2004, 2113 of 2004 and 2114 of 2004 which came to be allowed by the impugned judgment dated 14.07.2006.

(4) We have heard Mr. Krishna Kr. Singh, learned counsel appearing for the appellant and Mr. S. Sadasiva Reddy, learned counsel appearing for the respondents. We have also heard Mr. D. Abhinav Rao, learned counsel appearing for respondents No.11 to 13 and perused the impugned judgment(s) as also the materials on record.

(5) As per MS 57, on 14.05.1992 L.D.Cs, Typists and Computer Operators were added to category 4(b) and since then the applicability of Regulation 26 became impossible. In that context, the Board has issued a Memo dated 02.04.1994. According to the official correspondents without the said Memo the combined seniority could not have been drawn. As per Section 79 of the Electricity Supply Act, the Board has power to issue regulations in the form of notifications. The Memo dated 02.04.1994 was issued by the Board in exercise of its power conferred on it under Section 79 of the Electricity Supply Act. The Memo dated 16.02.2002 issued by the NPDC was only follow up of the said approved memo dated 02.04.1994 and solely made for proper implementation of the same which was required for making of an integrated seniority list.

(6). The grievance of the appellants is that the seniority has to be fixed as per Regulation 26. Regulation 26 does not deals with inter se seniority. As far as L.D.Cs are concerned, L.D.Cs posted in the account section and various other Sections are

required to undergo training before commencement of probation as against others posted to General and Personnel Sections. Merely because they were required to undergo training, their seniority cannot be counted from the date they have joined post after completion of training. If their date of the joining in the post after completion of training is taken into account for counting of their seniority it would cause serious hardship to them.

(7) In the impugned Judgment, the High Court has held that there is no regulation dealing with integrated seniority list either under the general regulations or the special regulations and, therefore, Memo dated 02.04.1994 was issued by the erstwhile APSEB for the preparation of the integrated seniority list. The Memo dated 16.07.2002 is only a follow up of Memo dated 02.04.1994 which was the clarification issued by the erstwhile APSEB.

(8) Relevant portion of the impugned judgment of the Division Bench of the High is extracted hereunder:

"27. To sum up there is no regulation dealing with integrated seniority list either under the general regulations and special regulations, therefore, under Memo dated 02.04.1994 the erstwhile APSEB issued guidelines for preparation of integrated seniority list. We do not see how this conflicts with Regulation 26. A comprehensive reading of Regulations 10(8) (a), 23(a) and 8 would make apparently clear that the appointing authority has to fix the date of commencement of probation while

integrating various cadres and preparing inter se seniority list. It did so by including the training period also by exercising its statutory powers under Regulation 25(a) and (b). The Board has to prepare the list of approved candidates for appointment or promotion. When there is reasonable /rationale basis for exercising the discretion under Regulation 25(a) by appointing authority, without contravening any of the Regulations, the list cannot be invalidated on the ground that the procedure contemplated under Section 79(c) of Electricity (Supply) Act, 1948 (in not publishing in the Gazette) was not followed.”

(9) We are in agreement with the view taken by the Division Bench and we do not find any ground to interfere with the impugned order(s). The appeals are accordingly dismissed.

.....J.
(R. BANUMATHI)

.....J.
(A.S. BOPANNA)

NEW DELHI,
JULY 24, 2019.